

“DEATH IS DIFFERENT”

WHY DOES A DEATH PENALTY CASE TAKE SO MUCH TIME AND COST SO MUCH MORE?

	CAPITAL CASE	NON-CAPITAL MURDER CASE
PERSONNEL	<ul style="list-style-type: none"> ♦ Two defense attorneys, at least one of whom is “death-qualified” <i>Standards for Appointment of Counsel for Indigent Defendants in Death Penalty Cases (Montana Supreme Court, 1999)</i> ♦ Mitigation expert 	<ul style="list-style-type: none"> ♦ One attorney, possibly two ♦ Mitigation expert unnecessary
PRE-TRIAL	Pre-trial investigation is very complicated and time-consuming for both prosecution and defense.	Pre-trial investigation is less complicated and time-consuming.
TRIAL	<ul style="list-style-type: none"> ♦ Trial is highly likely ♦ If convicted, potentially a second phase of trial will commence to find aggravating circumstances ♦ A lengthy and detailed evidentiary hearing on facts that would reduce the sentence from death 	<ul style="list-style-type: none"> ♦ Less likely because of potential for plea bargain over sentence ♦ No aggravation phase ♦ Mitigation hearing, occasionally, and is less complex
APPEALS	<ul style="list-style-type: none"> ♦ Appeal of the sentence is automatic. Montana Code Annotated § 46-18-307 (2007) ♦ Appellate counsel will include every identifiable issue in order to preserve them for future review <i>In State v. Dawson, for example, appellate counsel argued that the jury should have decided whether the state proved aggravating circumstances, even though the U.S. Supreme Court precedent held otherwise. Fifteen years later, the U.S. Supreme Court reversed its holding.</i> ♦ Appellate counsel will always petition the U.S. Supreme Court to review the Montana Supreme Court’s decision 	<ul style="list-style-type: none"> ♦ No automatic review. ♦ Only the most meritorious (2-3) issues will be raised ♦ U.S. Supreme Court review sought rarely
SENTENCE REVIEW	Sentence Review will be pursued in all capital cases.	Sentence Review only where there is no risk of an increased sentence.
POST-CONVICTION	<p>Post Conviction relief will be pursued in all capital cases. Therefore:</p> <ul style="list-style-type: none"> ♦ Trial court hearing on post-conviction issues ♦ Appeal to the Montana Supreme Court will raise all identifiable issues ♦ Counsel will petition the U.S. Supreme Court to review the Montana Supreme Court’s decision 	Post-conviction relief is rare and will address only the most meritorious issues.
HABEAS	<p>Federal habeas review will be pursued in all cases.</p> <ul style="list-style-type: none"> ♦ District Court hearing on all federal issues ♦ Appeal to the United States Court of Appeals ♦ Petition to the United States Supreme Court 	Federal habeas review is rare.
CLEMENCY	Clemency petition via the Montana Board of Pardons and Parole.	Clemency petition is rare.